

**GOA STATE INFORMATION COMMISSION
AT PANAJI**

CORAM: Shri Afonso Araujo, State Information Commissioner

Appeal No. 259/2008

Smt. Sushma Karapurkar.
H. No. 46/T-3, Karaswada,
Mapusa, Bardez,
GOA – 403 526

... Appellant.

V/s.

1) The Public Information Officer,
Office of the Under Secretary (Legal Affairs),
Department of Law,
Secretariat,
Porvorim – Goa

... Respondent No. 1.

2) The First Appellate Authority,
Office of the Joint Secretary (GA),
General Administration Department,
Secretariat,
Porvorim – Goa

... Respondent No. 2.

Appeal No. 272/2008

The Public Information Officer
& Under Secretary (Legal Affairs),
Law Department, Secretariat,
Porvorim – Goa

... Appellant.

V/s.

Smt. Sushma V. Karapurkar,
H. No. 46, Near Solid Cement Agency,
Karaswada,
Mapusa – Goa

... Respondent No. 1.

COMMON JUDGMENT

(Per Afonso Araujo)

As the Appellant and the Respondent No. 1 in Appeal No. 259 are the Respondent and Appellant respectively in Appeal No. 272/2008 those appeals are disposed by Common Judgment and they will be referred hereinafter as the 'Requester' and the 'P.I.O.' respectively. The Respondent No. 2 is a pro forma party in Appeal

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No. 259/2008 and the Order of the First Appellate Authority is challenged in Appeal No. 272/2008.

2. The Requester sought information under the Right to Information Act, 2005 (for short the 'RTI Act') and in the request dated 23.10.2008 addressed to the Public Information Officer, Headquarters, Town & Country Planning Department (hereafter referred as 'Town Planning') required answers to various queries enumerated at 1 to 8 in the said request and pertaining to the opinion rendered by the Law Department to the Town Planning. As the opinion was sought from Law Department the Public Information Officer of Town Planning transferred it to the P.I.O. By communication dated 18.08.2008 the P.I.O. stated that the Law Department was not supposed to tender legal opinion to private parties and transferred back the request dated 23.10.2008 to the Public Information Officer, Town Planning. Aggrieved by this decision of the PIO the Requester preferred the First Appeal and the First Appellate Authority by order dated 26.12.2008 directed the PIO to furnish the information at point 1, 2, 3, 6 and 7 within two weeks. Since the PIO did not comply with the said order the Appellant preferred the Second Appeal which is Appeal No. 259/2008 and the PIO also preferred the Second Appeal challenging the Order of the First Appellate Authority in Appeal No. 272/2008.

3. The Town Planning required a legal opinion from the Law Department on the settlement of pensionary dues of one deceased government employee, Shri Karapurkar. The Law Department provided the legal opinion to the Town Planning stating that 50% of family pension goes to first wife and 50% to any child of second wife. The Requester by letter dated 23.10.2008 addressed to Town Planning sought information on various aspects on the opinion tendered by the

Law Department and enumerated at Sr. No. 1 to 8 of the said letter. Since the opinion was tendered by the Law Department the Town Planning transferred the request dated 23.10.2008 to the PIO to answer those eight queries.

4. Once a legal opinion is sought by any Department from the Law Department, a fiduciary relationship arises between the Law Department and the Department requiring the opinion and until the opinion is given by the Law Department the Department seeking the opinion should not transfer any request requiring the opinion of the Law Department to the PIO but await till the opinion from the Law Department is received and then decide whether this opinion to be given or not under the provisions of the RTI Act. Even after giving the opinion if a copy of the opinion has been kept by the Law Department, the P.I.O. is not required to provide the opinion to the information seeker since the opinion tendered by the Law Department will always stand in a fiduciary relationship with the department seeking the opinion. It is for the Public Authority requesting for opinion in a particular matter to decide whether the information which is the opinion of the Law Department, has to be provided or not to the information seeker.

5. It appears that the present case the opinion regarding family pension sought by Town Planning was given by the Law Department and opinion tendered was returned to the Town Planning and the Requester is seeking by way of queries information on this opinion of the Law Department. As the said opinion was given by the Law Department, the Public Authority of Town Planning transferred the said request to PIO. It is for the Public Authority of Town Planning to decide one way or the other the information sought by the Requester and it was not proper to transfer to the PIO merely because the opinion was tendered by the Law Department. The Requester cannot

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seek information and question the PIO on the reasoning of the opinion given by the Law Department. Whether the opinion given on family pension is correct or not, the Requester has to approach the proper forum and it is not for the P.I.O. to provide the opinion much less answer the queries on the opinion given by the Law Department. In such circumstances, the decision of the P.I.O. was justified in transferring the information sought, back to Town Planning. Hence, the Order of the First Appellate Authority directing the PIO to provide the information sought, requires interference. With these observations, the following order:

ORDER

The Appeal No. 259/2008 is dismissed. The Appeal No. 272/2008 is allowed. The Order of the First Appellate Authority dated 26.12.2008 is quashed and set aside. The decision of the Public Information Officer in the communication dated 18.08.2008 transferring the request dated 23.10.2008 to the Town Planning is maintained. The Public Information Officer of Town Planning to decide the application of the Requester dated 23.10.2008 in accordance with the provisions of RTI Act.

Pronounced on this 15th day of March, 2010.

Sd/-
(Afonso Araujo)
State Information Commissioner